IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 7437 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
LALJI GIGA - Defendant(s)

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Appearance :
MR UDAY BHATT A.G.P. for Appellant(s) : 1,
MR PURANI for MR VIMAL M PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 08/12/2006

ORAL JUDGMENT

1. This First Appeal is filed by the State of Gujarat to challenge the judgment and award dated 2nd December, 1998 made by the learned Extra Assistant Judge,

Junagadh in Reference Case No. 245 of 1988. By the said award, the learned Judge has partly allowed the Reference Case and has directed the appellant to pay compensation at the rate of Rs. 530/- per Are for the irrigated land of Survey No. 56 Hectare 0-68 Are-25 sq. mtr., to the original claimant who is the respondent herein, together with all statutory benefits. The lands in question are situated at village Shobhavadala, Taluka Visavadar, District Junagadh. The said land was required for the purpose of constructing road between Bilkah and Manekvada. For that purpose Notification under Section 4 of the Land Acquisition Act, [the "Act" for short] was published on 4th January, 1981, whereas declaration under Section 6 of the Act was made on 28th May, 1982. After completing the formalities, the award was made by the Special Land Acquisition Officer on 15th November, 1984. The Special Land Acquisition Officer granted compensation at the rate of Rs.70=00 per Are. However, the respondent was not satisfied with the quantum of compensation and he preferred the aforesaid Reference case, which was partly allowed by the Reference Court as stated above.

2. The Government has, therefore, approached this Court to challenge the decision and award made by the Reference Court. The record and proceedings of the case are present. It is submitted by Mr. Bhatt learned A.G.P., for the appellant that the Reference itself was not

maintainable, since it was beyond the period of limitation prescribed under Section 18 of the Act. He has submitted that award was made on 15th November, 1984. Shortly thereafter, on 21st November, 1984, notice under Section 12(2) of the Act was served and the amount of compensation was paid on 26th March, 1985. Reference under Section 18 of the Act was made on 13th October, 1987. According to Mr. Bhatt when notice has been served on the respondent, the period of limitation under Section 18 of the Act would be six weeks from the date of receipt of notice for filing reference. However, the present reference has been filed on 13th October, 1987 i.e., after the expiration of period of limitation. Mr. Purani learned advocate appearing for Mr. Vimal Patel learned advocate for the respondent has however, contested the submission of Mr. Bhatt. According to him, notice under Section 12(2) of the Act is not served and, therefore, the reference is within the period of limitation. Mr. Bhatt has further submitted that there were sale instances available, but the Reference Court has not thought it fit to have them on record and decide the quantum in accordance therewith. The Court has however, proceeded to determine the compensation on the basis of yield method. He has, therefore, submitted that this appeal be allowed. Mr. Purani has also opposed this submission of Mr. Bhatt. According to him the method adopted by the Reference Court is also recognized in law

and the quantum of compensation arrived at on the basis of such method cannot be said to be improper and unjust. He, therefore, submitted that the appeal is required to be dismissed.

3. I have closely perused the record and proceedings of the case. I have also carefully considered the rival submissions. So far as the submission of Mr. Bhatt with regard to limitation is concerned, it appears from the record that plea regarding limitation was raised in the written statement. It was contended in paragraph 3 thereof, that the Reference was beyond the period of limitation and, therefore, it was required to be rejected. On the basis of such pleadings, the Reference Court has framed the issue. Issue no. 3 reads as under :-

“3. Whether this application is in time”.

3.1. Exh. 34 is the evidence of Manubhai Popatbhai Jogiya. At the relevant time he was working as Deputy Mamlatdar in Junagadh Prant Office. In the evidence he has stated that the award was published by the Special Land Acquisition Officer under Section 11 of the Act on 15th November, 1984 and thereafter notice under Section 12 (2) of the Act was served on the respondent on 21st November, 1984 and he was apprised of the award. He has been cross-examined by the learned advocate for the

respondent. However, no question on the point of limitation or service of notice under Section 12(2) of the Act has been put to him. In other words, the version of the witness with regard to service of notice under Section 12 (2) of the Act on the respondent has gone unchallenged. Exh. 37 is the written submission of the appellant filed by the District Government Pleader. In paragraph 1 thereof also, it is stated that the award was declared on 15th November, 1984 and the applicants [including the respondent] were served with notice under Section 12 (2) of the Act on 21st November, 1984 and they were informed about the award. It is also stated that the amount of compensation was accepted by them without raising any dispute. Again in paragraph 5 of the written submission, it is stated that the applicants of the case were served with the notice under Section 12(2) of the Act on 21st November, 1984 and the Reference has been filed by them on 23rd October, 1987. Therefore, the same was barred by limitation. The judgment of the Reference Court however, does not contain any discussion on this aspect even though issue on limitation has been framed. It is very surprising that when the plea with regard to limitation has been specifically raised, and it has been deposed in the evidence of Deputy Mamlatdar and again on the basis of the same, written submission is made in that behalf, it was the duty of the Reference Court to deal with this aspect in detailed and it ought to have given

definite finding on the issue of limitation. That has not been done. It is no doubt submitted by Mr. Purani that the appellant has not produced on record copy of the notice served on the respondent and, therefore, the plea of bar of limitation cannot be accepted. It may be noted here that the Deputy Mamlatdar's evidence on that point has gone unchallenged. But apart from that, when the Reference Application has been contested by the appellant on the ground of bar of limitation, right from the beginning, the learned Judge ought to have dealt with that aspect in his judgment, it being one of the very vital issues of the case. In absence of any discussion on that aspect, it will be difficult for this Court to come to just and proper conclusion and deliver the judgment in satisfactory manner. So far as other issue with regard to method adopted by the Court for assessment of the compensation is concerned, the record shows that there are sale instances of contemporary period. They are better pieces of evidence, but the method adopted by the Reference Court is also not unknown and it cannot be said that the Court has committed grave error on assessing the compensation on the basis of yield method. It therefore, appears that the present award is required to be quashed and set aside and it is hereby quashed and set aside. The matter is remanded to the Reference Court to enable the parties to adduce further evidence on the aspect of limitation. The Reference Court is, therefore, directed

to permit the parties to lead oral as well as documentary evidence, if they so chose in support of their respective cases on the aspect of limitation. It is also clarified that all other material which is already brought on record even by way of oral evidence will remain as it is and it will be open for the learned Judge to take into consideration while deciding the issue of limitation or any other issue involved in the case, including that of just compensation. It is also clarified that on the aspect of limitation, if the parties choose to lead evidence, no formal application under Order 41 Rule 27 of the Civil Procedure Code is required to be filed, but they can declare their such intention by submitting purshis. So far as the other issues are concerned, if they choose to adduce additional evidence on record, they shall submit an application under Order 41 Rule 27 of the Civil Procedure Code and the learned Judge will decide it strictly on the merits of the same. The entire exercise to be completed within a period of six months from the date of receipt of judgment of the Reference Court. The office is also directed to remit the record and proceedings of the case together with the judgment of this Court forthwith upon placement of the judgment in the record of this appeal.

4. The net result is the appeal is allowed with no order as to costs.

[Akshay H. Mehta, J.]

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